4376

SUPREME COURT OF THE UNITED STATES.

No. 218.

ABSALOM FOSTER, PL'FF IN ER.,

vs.

BARBARA ANN CALDWELL.

IN ERROR TO THE CIRCUIT COURT U. S. FOR THE NORTHERN DISTRICT OF NEW YORK.

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United States of America, ss.

The President of the United States of America to the judges of the circuit court of the United States for the northern district of New York, second circuit, greeting:

Because, in the record and proceedings, as also in the rendition of a judgment in a plea which is in the said circuit court before you, between Barbara Ann Caldwell, (who sues as a poor person,) plaintiff, and Absalom Foster, defendant, a manifest error hath happened, to the great damage of the said Absalom Foster, as by his complaint appears; and it being fit that the error, if any there hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, you are hereby commanded, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the first Monday of December, 1858, in the said Supreme Court to be then and there held, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right and according to the law and custom of the United States should be done.

Witness the honorable Roger B. Taney, chief justice of the said Supreme Court of the United States, this 5th day of April, in the year of our Lord one thousand eight hundred and fifty-eight, and of the independence of the United States the eighty-second.

[L. S.]

A. A. BOYCE, *Clerk.*

D. GOTT,
Att'y for the plff. in error.

United States of America, ss.

To Barbara Ann Caldwell, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington on the first Monday of December next, pursuant to a writ of error filed in the clerk's office of the circuit court of the United States for the northern district of New York, second circuit, wherein Absalom Foster is the plaintiff in error and you are the defendant in error, to show cause, if any there be, why the judgment in the said writ of error mentioned should not be corrected and speedy justice should not be done to the parties in that behalf.

Witness the honorable Nathan K. Hall, district judge of the

United States for the northern district of New York, setting as judge of the circuit court of the United States for the said northern district, in the second circuit, the fifth day of April, 1858.

N. K. HALL.
Dist. Judge U. S. northern dist. of New York.
D. GOTT,
Att'y for the plff. in error.

In Supreme Court of the United States.

ABSALOM FOSTER, plff. in error,
vs.
BARBARA ANN CALDWELL, deft. in error.

I hereby admit due service of the citation in the above action upon the writ of error therein.

Dated April 7, 1858.

A. GIBBS, *Defts. Atty. in error.*

United States of America, northern district of New York, ss.

I, Augustus A. Boyce, clerk of the circuit court of the United States of America, for the northern district of New York, in the second circuit, do hereby certify that the writings annexed to this certificate are true copies of their respective originals on file and remaining of record in my office.

In testimony whereof, I have hereunto subscribed my name and have caused the seal of the said court to be hereunto affixed, at the city of Utica, in the said northern district, [L. S.] this 20th day of April, in the year of our Lord one thousand eight hundred and fifty-eight, and of the independence of the said United States the eighty-second.

AUGS. A. BOYCE, *Clerk.*

Pleas in the circuit court of the United States, for the northern district of New York, in the second circuit, at the city hall in the city of Albany, on the third Tuesday of May, of the term of May, one thousand eight hundred and fifty-three: witness, Samuel Nelson and Nathan K. Hall, judges.

A. A. BOYCE, *Clerk.*

Northern district of New York, second circuit, ss.

Barbara Caldwell, plaintiff, puts in her place James S. Gibbs, her attorney, against Absalom Foster, in a plea of trespass and ejectment.

Northern district of New York, second circuit, ss.

Absalom Foster puts in his place Henry D. Barto, junior, his attorney, at the suit of Barbara Caldwell, in a plea of trespass and ejectment.

Northern district of New York, second circuit, ss.

Be it remembered, that heretofore, to wit, of the term of January, one thousand eight hundred and fifty-three, of this same court, before the judges thereof, at the city hall in the city of Albany, came Barbara Caldwell, a citizen of the State of Ohio, (who is allowed by an order of this court to prosecute as a poor person,) by James S. Gibbs, her attorney, and brought hereinto said court her certain bill against Absalom Foster, a citizen of the State of New York, of a plea of trespass and ejectment, and there are pledges, &c., which said bill follows in these words, viz:

Circuit court of the United States, northern district of New York, 2d circuit, of the term of January, A. D. 1858.

BARBARA CALDWELL agt. ABSALOM FOSTER.

Northern district of New York, ss.

Barbara Caldwell, a citizen of the State of Ohio, and who resides in said State of Ohio, (and who prosecutes as a poor person, allowed and admitted so to prosecute by an order of this court,) by James S. Gibbs, her attorney, complain of Absalom Foster, a citizen of the State of New York, and resident of said State of New York:

For that the said Barbara Caldwell was, on the first day of June, 1850, possessed of a certain one hundred acres of land, situated and being in the town of Hector, county of Tompkins, and State of New York, and within the northern district of said State, being part of military lot number fourteen, in said town of Hector, and in the northwest corner of said lot, and being one hundred and sixty rods long north and south, and one hundred rods wide east and west, and bounded west and north by the west and north lines of said military lot fourteen, and being then and still of the value of two thousand five hundred dollars; which premises the plaintiff claims to own, and does own in fee, and is, and for more than twenty-five years last past has been, and still is seized in her own mere right of an estate of inheritance in fee simple of, in, and to the same; and the plaintiff being so seized and possessed of said one hundred acres, the said defendant afterwards, to wit, on the first day of July, 1850, entered into and upon the said premises and every part thereof, and ejected and expelled the said plaintiff therefrom, and unjustly withholds from her the possession thereof, and has ever since such entry and expulsion continued to possess, use, and occupy the same, and to receive the rents, issues, and profits thereof, which profits the

plaintiff avers, since the entry and occupation of defendant, are of the value of one thousand dollars; wherefore the plaintiff says she has sustained damage to three thousand dollars, and thereof she brings suit, &c.

And now at this day, that is to say, on the third Tuesday of May, in the term of May, 1853, at the city hall in the city of Albany, before the judges of this same court, until which day the defendant had leave to impart, and then and there to answer the said bill, came the said defendant, by Henry D. Barto, junior, and says that he is not guilty of unlawfully withholding the premises claimed by the said Barbara Caldwell; and of this, he puts himself upon the country, and the said Barbara Caldwell doth the like, &c.

Wherefore, to try the issue above joined, let a jury thereupon come before this same court, at the court-house in Canandaigua, on Tuesday next, after the third Monday in June now next, each of whom, &c., and who neither, &c., to recognise, &c., because, &c., the same day is given the parties aforesaid, at the same place, at which day and place come the parties aforesaid, by their attorneys aforesaid, and the marshal of said district has not sent hither the writ to him in this behalf directed, nor has he done anything thereupon; and, hereupon, the process aforesaid, between the parties aforesaid, is continued before this same court until the third Tuesday of October, in the term of October, 1854, at the city hall in the city of Albany, and the jurors of the jury whereof mention is made being duly summoned, also come, and were duly chosen, tried, and sworn, and the said plaintiff produced before said court and jury her proof, for the purpose of maintaining her said action; and after such proof was introduced and closed, the defendant took certain objections and exceptions to the sufficiency of the same to maintain said action, and the court at the request and on motion of the counsel did direct the said jury to find a verdict in favor of the defendant, and the jury in obedience to such order and charge, found the defendant not guilty according to his said plea; which order, charge, and direction was in due form excepted to by said plaintiff, and exceptions reduced to writing by plaintiff were propounded to the said court for its decision upon certain matters of law thereupon presented and appearing.

But because the said court now here is not advised what judgment to render upon the premises and exceptions thus propounded, day is given the parties, and the said plea, process, and proceedings are continued until an adjourned term of said court, to be holden at the city hall in the city of Albany, on Tuesday, the 20th day of February, 1856, because the court will advise thereof, the same day is given the parties aforesaid, at the same place; at which day and place came the parties aforesaid, by their attorneys aforesaid, and the said court, before the judges thereof

now here, having advised upon the matters so as aforesaid presented, do hereupon adjudge and order that the verdict so as aforesaid rendered be, and the same hereby is vacated and set aside, and a new trial granted.

Wherefore, to try the issue above joined, let a jury thereupon come before the same court, at the city hall in the city of Albany, on the third Tuesday of May next, each of whom, &c., and who neither, &c., to recognize, &c., because as well, &c., the same day is given the parties aforesaid, at the same place, at which day and place came the parties aforesaid, by their attorneys aforesaid, and the marshal has not sent hither the writ to him in this behalf directed, nor has he done anything thereupon; and, hereupon, the process aforesaid, between the parties aforesaid, is continued before the same court until the third Tuesday of October, in the term of October next, (1856,) at the city hall in the city of Albany, the same day is given the parties aforesaid, at the same place; at which day and place, at the city hall in the city of Albany, on the third Tuesday of October, 1856, came the parties aforesaid, by their attorneys aforesaid, and the jurors of the jury whereof mention is above made, being duly summoned, also come, who to speak the truth of the matters in issue aforesaid, being chosen, tried, and sworn, do upon their oath say: "that the said Absalom Foster, the defendant above named, is guilty of unlawfully withholding the premises named and described in the plaintiff's declaration, in manner and form as she has therein complained, and that she was and is seized in fee of the same of an absolute estate of inheritance, in manner and form as she has also in her complaint set forth and alleged;" and, hereupon, the defendant makes and takes certain exceptions to the ruling and decisions of the court, upon the evidence produced, offered, and given by the plaintiff to sustain said action, and prays that judgment be stayed until the decision thereon.

And because the court now here is not advised what judgment to give upon the exceptions so taken, day is given the parties, until the first Tuesday after the third Monday in June, in the term of June next, (1857,) at the court-house in Canandaigua, because the court will advise thereof; at which day and place, at the court-house in Canandaigua, come the parties aforesaid, by their attorneys aforesaid, and the said court now here having advised thereon, and mature deliberation being had, do adjudge and determine that the said exceptions so taken by defendant, be overruled as not well taken, and that the plaintiff is entitled to judgment according to her declaration and the finding of the jury.

Judgment signed this 13th day of January, 1858.

N. K. HALL.

Therefore, it is considered by the said court now here, at the court-house in Canandaigua, on Tuesday, the sixteenth day of June, of the term of June, 1857, that the said plaintiff is and was seized in fee of the premises described in her declaration, in manner and form as she has in her said declaration complained, and that the defendant is guilty of unlawfully withholding the same, as said plaintiff has also complained, and that she recover the same, and also one hundred and sixty-eight dollars and forty-three cents, for her costs and charges by her about her suit in this behalf paid, laid out, and expended, and that she have execution as well to cause her to have possession of said premises as for her said costs and charges so adjudged; and the said defendant, &c.

Circuit court — United States, northern district of New York, 2d circuit.

ABSALOM FOSTER
ads.
BARBARA ANN CALDWELL.

In this action the plaintiff is a citizen of the State of Ohio, and the defendant a citizen of the State of New York. The action was ejectment to recover the possession of one hundred acres of land in the northwest corner of military lot number fourteen, Hector, Tompkins county, and State of New York, stated in the declaration to be one hundred and sixty rods long north and south, and one hundred rods wide east and west. It was first tried at the October term of this court, 1854, and under the direction of the court there was a verdict for the defendant. The plaintiff made a case which was argued at the October term, 1855, and a new trial was granted at the adjourned term held in February, 1856. The cause again came on for trial at a term of this court, held at Albany on the 21st day of October, 1856, before honorable Samuel Nelson and Nathan K. Hall, judges of said court, and a jury. Before proceeding to the trial, it was stipulated that the case upon which the new trial granted should be read in evidence upon this trial, and the facts proved and established upon the trial of said action, at the October term, 1854, and embraced and contained therein, should be deemed on this trial as facts proved as fully as if the documents and witnesses were again produced in court, subject to the same exceptions as if the witnesses and documents were again produced in court. A copy of the written stipulation is annexed.

The cause then proceeded to trial, and to maintain the action on his part, the plaintiff's counsel read from the case the following documents and depositions:

1st. The plaintiff offered and read in evidence an authenticated

copy of a patent from the State of New York to Captain James Robecheaux, for military lot 14, Hector, and two other lots containing six hundred acres each, excepting one hundred acres in the southeast corner. Patent dated Sept. 13, 1790; approved by commissioners' of the land office, and passed the secretary's office Sept. 7, 1791.

2d. An authenticated copy of the record of deed under hand and seal of the clerk of Cayuga county, from James Robecheaux to Asa Bullard, a copy of said deed with the note of registry, or filing and certificates of acknowledgments, or proof, is hereto annexed, marked document number 2.

The counsel for the defendant objected to the introduction or reading of this deed:

1st. Because it did not describe or identify any lands, or state what lands were conveyed or embraced in the deeds.

2d. Because there was no proper acknowledgment or proof of execution; and further, that it did not appear to have been properly registered, because no month appears.

3d. There was no date to the deed or anything to show when it was executed.

4. Because it appears to have been recorded in the county of Cayuga, after the county of Seneca had been set off, and at a time when the lands on lot 14, Hector, were in Seneca county.

5. Because the grantor was not identified or proved to the acknowledging officer.

Plaintiff's counsel maintained and insisted upon the reverse of these propositions. The court allowed the evidence, and defendant's counsel duly excepted.

3d. Plaintiff next introduced and offered in evidence an authenticated copy of the record of a deed, under hand and seal of office of the clerk of Cayuga county, from Asa Bullard to William Constable, an exact copy of which, with the filing or registry, certificate of proof and recording, is hereto annexed, marked number 3. Said document dated Nov. 8, 1791.

Defendant's counsel objected to the reading of this document, alleging and insisting:

1st. That the grantor was not proved or identified in the certificate of proof.

2d. That it was not recorded anywhere.

3d. That it having been entered for recording in Cayuga county clerk's office, Nov. 2, 1791, was not equivalent to recording.

4. That the words "Regs. 28, 1795," did not show a compliance with the statute.

Plaintiff insisted that it was an office copy or document put in the clerk's office, according to the requirements of the law, there to remain, and that the endorsement "Regs. 28, 1795," marked on the deed, and its date Nov. 8, 1791, was sufficient to show that the original was deposited and was in that office. The

court allowed the document to be read, and the counsel for the defendant thereupon duly excepted.

4. Plaintiff next offered in evidence an authenticated copy, under the hand and seal of office of the clerk of Cayuga county, of the record of a deed dated February 4, 1792, from William Constable, by James Constable, his attorney, to Martin Hoffman, said copy, with the certificate of proof, registry, and note of recording is hereto annexed, marked number 4.

Defendant's counsel objected to the reading of this document, on alleged grounds:

1. It had not been shown that William Constable had empowered James Constable to make such deed.

2d. That the proof of identity of the grantor was not made or certified.

3. That it could not have been recorded at the time it purported to have been recorded, as the lands were at that time in Seneca county.

4. That there was no evidence that the deed or power had been filed as required by law, nor the power of attorney. The document was read, and defendant's counsel excepted.

5. Plaintiff next offered an authenticated copy of the record of a deed, under the hand and official seal of the clerk of Cayuga county, from Martin Hoffman to Thomas B. Budgen, bearing date March 7, 1793. A copy of said deed or document is hereto annexed, marked number 5, and containing a recital of the deed made by James Constable, as attorney of William Constable; this recital is in the body of the deed, and was referred to by plaintiff as proving the power.

Defendant's counsel objected to this document on grounds:

1st. That the recital did not prove the power of James Constable, nor admit it.

2. That it appeared by the document the deed was recorded in Cayuga county, after Seneca had been set off, and the lands were in Seneca.

4. The grantor was not identified or proved. The deed was read, and defendant's counsel excepted. The above named four deeds contain the whole of lot 14, Hector, and some of them other lots, and said copies are in every particular true and exact copies of the documents offered in evidence, dates, consideration, registry, filing, certificates, and note of the time of recording.

6. Plaintiff next offered in evidence an authenticated copy of a deed from Thomas B. Budgen and wife to Richardson, duly certified under the hand and official seal of the clerk of Cayuga county, for lot fourteen, Hector, and three other lots, dated February 12, 1795, consideration 985 pounds, duly acknowledged before John Ray, a master in chancery, on the 13th day of February, 1795, and recorded May 23, 1795, in Cayuga county clerk's office.

7th. Plaintiff offered in evidence the certified copy of an abstract of a mortgage executed by John Richardson to Thomas B. Bridgen, dated February 13, 1795, for four certain lots lying and being in Onondaga county, viz., lot 71, Locke, lots 14 and 24, Hector, and lot 23, Hector, and to secure the payment of 985 pounds 5 shillings. Recorded April 27, 1795, in Cayuga county clerk's office. Said abstract is annexed, marked document 7,106.

Defendant's counsel objected to the reading of this document, on the ground that the abstract did not show before whom the mortgage was proved or acknowledged or who certified the proof. An abstract is merely registered, and cannot *and cannot* be certified by the clerk so as to make it evidence. It is merely good as notice to subsequent incumbrances. The due proof and acknowledgment is not left to the judgment or discretion of the clerk. The court sustained this objection, and the plaintiff excepted to the decision.

8. Plaintiff next offered in evidence the proceedings in a foreclosure suit in the court of chancery of the State of New York, wherein Thomas B. Budgen was plaintiff and John Richardson was defendant, and defendant was proceeded against as an absentee, an authenticated copy of the complaint, and the several orders in the progress of the cause, and enrolled decree duly certified under the signature and official seal of the clerk of the city and county of New York, in whose custody said proceedings are, and produced by plaintiff, by which it appeared that the bill was filed May 25, 1799, and charges that John Richardson, defendant, on the 13 day of February, 1795, was indebted to complainant, Budgen, in the sum of nine hundred and eighty-five pounds five shillings, and to secure payment gave to Budgen his bond in the penal sum of one thousand nine hundred and seventy pounds ten shillings, with condition to pay the sum of nine hundred and eighty-five pounds five shillings, with lawful interest, as follows: four hundred and ninety-two pounds twelve shillings and six pence, with interest, on the first day of October, 1795, and the further sum of four hundred ninety-two pounds and twelve shillings and six pence, with interest on the same, on the first day of October, 1796; and that to secure said payment, said John Richardson did execute his indenture of mortgage on all these four lots, being in Onondaga county, viz: lot 71 in Locke, containing 550 acres; lots number 14 and 24, in the township of Hector, each containing 500 acres; also lot No. 23, in Hector, containing six hundred acres, subject to redemption upon payment of said sums of money; and reciting further, that said John Richardson duly acknowledged said mortgage before John Ray, a master in chancery, on the 5th day of March, 1795, and that said mortgage was registered on the 27 day of April, 1795, in the clerk's office of the county where said lands were; and alleging, also, that said sums of money thereby secured had not been paid nor any part thereof,

and the bill proceeds in the usual course to pray a decree of foreclosure.

Said enrollment further shows, that on the 3d day of December, 1800, an order was made by the chancellor upon affidavit due proof, that Richardson was out of this State, and process of subpœna could not be served upon him; that he entered his appearance in 8 weeks after notice in two newspapers, and such notice to be inserted within 20 days from date of said order, and continued once in each week for 8 weeks; that on the 5th day of May, 1801, an order was made on proof of publication and certificate of the clerk that defendant had not entered his appearance; that the bill be taken as confessed, and that it be referred to a master to ascertain what was due upon said bond and mortgage; that on the 15 day of June, 1801, Thomas Cowper made report that there was due then $3,003 07; an order was on the same day made by the chancellor that said report be confirmed unless cause be shown in eight days; on the 5th day of March, 1802, an order was made that James M. Hughes, a master, enquire and report the value of the mortgage premises; on the 20th day of March, 1802, said master reported the value, and a final order or decree for sale was made, unless the defendant pay the debt in four months. These proceedings, the enrolled decree, &c., showed that subpœna was issued on filing the bill May 25, 1799, and that the plaintiff regularly and duly pursued the suit as against an absent defendant to a final decree as above stated, March 20th, 1802.

Plaintiff offered this enrollment to prove the existence of mortgage named in the abstract. No objection was made by the defendant to the regularity of this decree, but his counsel objected that it was irrelevant and did not prove the mortgage; that the mortgage itself should be proved or accounted for, and these proceedings did not affect strangers. The evidence was admitted, and defendant's counsel excepted.

9. Plaintiff then produced the authenticated copies, under the hand and official seal of the clerk of the city and county of New York, in whose custody the same now are, of a bill in chancery in favor of Peter J. Munroe against John Richardson, and the answer of John Richardson and enrolled decree in said cause. The bill was filed on or about the 6th day of February, 1807, and charges among other things that Thomas B. Budgen, after obtaining the aforesaid decree of foreclosure against John Richardson, as recited above, being indebted to him, said Peter J. Munroe, in a large sum, did, on the 11th day of February, 1803, duly assign and transfer said debt and bond, *and bond*, and mortgage, and all interest he had therein, to said Peter J. Munroe, and that subsequently *and that subsequently* and before the same was collected, said Thomas B. Bridgen departed this life, and that he did not leave any heirs, executors, nor was any adminis-

trator ever appointed or other representative, and that he died insolvent sometime about the year 1804, leaving the said decree so assigned the property of said Peter J. Munroe, and reciting in substance the proceedings and decree in the case of Thomas B. Bridgen against John Richardson, as above, and praying that said decree might be enforced for the benefit of said Peter J. Munroe, by a sale of the mortgaged premises, pursuant to said former decree of foreclosure; that upon filing the bill a subpœna was duly issued, and the defendant, John Richardson, appeared and put in his answer admitting the debt, the bond and mortgage, and regular foreclosure, but setting up some small payments; and such proceedings were thereupon had in said court, as appears by said bill, answer, enrollment, and decree, and in due form, according to the course and practice of said court; that it was ascertained pursuant to an order of said court, that there was due upon said decree to Peter J. Munroe, on the 9th day of November, 1809, the sum of $4,850 40, and a decree for sale of said *mortgage* premises was made ordering a sale thereof, and that a sale was finally made pursuant to said final decree, as appears by the several orders contained in the enrollment. The whole proceedings appeared to be regular, and no objection was made upon that ground. Defendant's counsel objected that the proceedings were irrelevant. Defendant's counsel also objected that no one represented Bridgen who had died, and that all the proceedings in the foreclosure and subsequent suit could not affect the defendant. The evidence was admitted, and defendant's counsel duly *accepted*.

10. Plaintiff offered in evidence the authenticated copy of the record of a deed duly certified, under the hand and official seal of the clerk of the county of Tompkins, from William L. Rose, a master in chancery, to Thomas Moris, dated the 29th day of August, 1810, whereby, for the consideration of $340, said master sold and conveyed to him lot number 14, Hector. This deed recites the original bond and mortgage executed by Richardson to Bridgen, the amount when due, the default and foreclosure by Bridgen, the assignment to Munroe, and his bill and proceedings in chancery. It was duly acknowledged before a master in chancery, and certified December 12, 1810, and recorded in Tompkins county clerk's office, August 22, 1843. Defendant objected to this deed as irrelevant, that he was a stranger to it, and not affected by it or the recitals in it. The court allowed the deed to be read, and defendant's counsel duly excepted.

11. Plaintiff then produced and read in evidence an authenticated copy of the record of a deed for lot 14, Hector, from Thomas Morris to Jeremiah Van Rensselaer, dated the 13th day of December, 1810. Consideration five dollars; acknowledged before and certified by Thomas Coper, a master in chancery, on the

day of its date, and recorded in Tompkins county clerk's office, on the 22d day of August, 1843.

12. The authenticated copy of the records of a deed from Jeremiah Van Rensselaer to Walter Wood, for lot 14, Hector, dated May 1, 1811. Consideration ten dollars; duly acknowledged May 25, 1811, and acknowledgment certified by a master in chancery, and recorded in Tompkins county clerk's office, August 22d, 1843.

13. An authenticated copy of the record of a warranty deed, from Walter Wood and John Richardson to Elizabeth Luckey, for two hundred acres of lot 14, Hector, dated October 16th, 1812, consideration $800, described as follows: "Beginning at the northwest corner of said lot, and runs east on the north line of said lot to the northwest corner of a piece of land, this day conveyed by the said parties of the first part to Polly and Deborah Longacre; then south on the west line of their land to the south line of said lot; then west to the southwest corner of said lot; then north to the place of beginning, containing two hundred acres, more or less; acknowledged on the day of its date before E. Burnham, a master in chancery, and recorded in Seneca county clerk's office, Nov. 9, 1812. This was read. A copy of said is annexed, marked number 7.

14. Plaintiff produced and read in evidence an authenticated copy, under the hand and official seal of the clerk of Seneca county, of the record of a deed from Elizabeth Luckey to Barbara Ann Caldwell, for *for* the same two hundred acres named in the last above deed, No. 13, dated January 10, 1814, acknowledged on the same day, and recorded the 19th day of January, 1814. Consideration one thousand dollars. A copy of said deed is hereto annexed, marked document number 8.

Plaintiff then called William F. Allen, esq., of Auburn, deputy of the clerk of Cayuga county, as a witness, who had the books for entering and registering filed deeds, and who produced the original deeds, of which numbers 2, 3, 4, and 5 are copies, viz: James Robecheaux to Asa Bullard; Asa Bullard to William Constable; William Constable, by James Constable, his att'y, to Martin Hoffman; and Martin Hoffman to Thomas B. Budgen.

Witness said they were taken by him from the clerk's office of Cayuga county, at the request of the clerk, to be produced on this trial, and they were severally offered and read in evidence, and were found to be in all things, registry, filing, acknowledgments, and proof, and recording precisely the same as the copies already produced, and read 2, 3, 4, and 5, except the deed number 3. Asa Bullard to William Constable, appeared to have been recorded in the clerk's office of Cayuga county, and a certificate thereon made of such recording, Sept. 27, 1854.

Plaintiff then introduced the deposition of Caleb Smith, taken before the county judge of Seneca, pursuant to an order on due

notice, on the 12th day of October, 1854. This witness testified as follows: I was 72 years of age last August; am a farmer, and reside in Hector, Tompkins county; I came to the town of Hector to reside, March, 1794; I have lived there ever since; I know military lot 14, Hector; I reside three or four miles from it; I have known this lot since 1807 or 1808; when I first knew this lot there was a clearing on the northwest corner of ten or twelve acres, and a log dwelling-house on the cleared part; there was an improvement made as early as 1807 or 1808, by Thomas Wychoff, a colored man; I also knew Samuel Coriell; he lived on the lot in the clearing, and in this log house, after Wychoff left it; I don't recollect in what year Coriell went on, or the length of time he stayed; Barbara Caldwell, the plaintiff, came on next after him; plaintiff occupied the northwest corner of the lot; she came on after Coriell left, and occupied until 1829 or 1830; there was a clearing on the lot when I first knew it, in 1807 or '8, said to be made by Thomas Wychoff, the colored man who was then in possession; Wychoff was the first occupant I knew, and I think he stayed until 1809 or '10; then Samuel Coriell came on and occupied, until plaintiff came on and occupied until 1829 or '30; I was acquainted with her the whole time she lived there.

Cross-examined by defendant.

Witness said: I am positive that Thomas Wychoff lived in the house on the northwest corner of this lot; he never lived on the other lot; he never lived on the other lot on the west side of the wood; I first saw him in possession of that corner of the lot; I am not mistaken.

16. Plaintiff then read the deposition of Philip Aber, who said: I am sixty-two years of age, and reside in the town of Dix, Chemung county; am a farmer, and know the plaintiff; I went to the town of Dix to reside 27 years ago; I was formerly from New Jersey, Morris county; I removed from there to the town of Hector thirty-nine years ago, and lived there twelve years, until I removed to Dix, where I have lived twenty-seven years; Amos Aber was my brother; he is not living; he died a year ago last spring; was a native of New Jersey, and there died; Amos Aber once resided in Hector, Tompkins county, and lived on lot 14; I knew the lot, and have seen him there; I was often there when he lived on it; I lived with him on the lot at one time 10 months. Amos Aber had a wife and family in New Jersey when he came to this country, and left them there; he had two wives before he came away from Jersey; his first wife died about 20 years before he came away; his second wife was living in New Jersey when he came to this country, and while he lived here; when he left Hector he went back to New Jersey; I saw him in New Jersey once after he went back, but did not see his

wife; they did not live together; he had no children by his second wife in New Jersey. Plaintiff and Amos lived together as husband and wife on lot 14, Hector, while he was in this country; I was very often at their house in Hector on this lot, and at one time stayed there two months. The northwest one hundred acres of the lot was in possession of Amos Aber and the plaintiff; they claimed to own two hundred acres on the west side of the lot. A good portion of the northwest 100 acres was cleared—forty or fifty acres, I should think. Amos Aber's first wife died in New Jersey; I was not present at the second marriage; he lived with his second wife in New Jersey until he came to this country; I have not heard of the death *of the death* of his second wife.

17. Plaintiff read from the former case the evidence of William W. Spencer, as follows, who said: He was fifty-six years of age, and resided in Hector, Tompkins county, and knew the parties to this suit; became acquainted with defendant about six or seven years ago. I came to Hector to reside in 1817, and have resided there ever since; am acquainted with military lot 14, Hector, and reside on the lot adjoining it on the west, and across the road from it; I own one hundred acres of the lot in the southwest corner; have known the lot since 1817; when I first came there was a clearing in the northwest corner of 20 or 30 acres, and a house on the cleared part, and plaintiff lived on it; knew a colored man by the name of Thomas Wychoff; he used to work for my father; I did know that he lived on this lot; I never saw him there. I did not know Samuel Coriell; he did not live on the lot 14 when I first knew it in 1817; I knew the plaintiff; she was in possession of the northwest corner when I came to Hector in 1817; she was in possession of the northwest one hundred acres; she lived on the lot from the time I came to Hector until 1830 or 1832; she occupied the northwest one hundred acres; she claimed 200 acres, the west side of the lot. When I first knew the lot there was 25 or 30 acres cleared on the northwest corner; afterwards Abers cleared up to the woods on the east side; the south part was considerably cut over; there must have been 45 or 50 acres cleared in all while plaintiff was on it; I purchased the southwest 100 acres of this lot from plaintiff soon after I came to Hector. Plaintiff, when I first knew her, was called by the name of Barbara Ann Caldwell; she afterwards married a man by the name of Amos Aber; I cannot recollect the time; the name of the woman Aber married was Barbara Caldwell; there was Ann in her name; I purchased of her and Amos Aber as husband and wife, and they joined in the deed as such. Amos Aber left the premises before she did, and went out of the country; he left the country five or six years before she did; he went to New Jersey; he wrote back from there to me; she may have remained five to seven years after he left; he was said to have another wife and family in New Jersey; such was the common report in the neighborhood, and

that he had gone back to live with them; he is said to be dead. I do not know that while he lived in Hector he had a wife and family in New Jersey; such was the report. I can't say who made the first clearing, who first lived there, or who built the log house. The 100 acres is worth twenty-five dollars an acre; it was cleared up to the east line of this one hundred acres when I first became acquainted with it. The present occupant, Foster, claims up to the woods on the east side of this 100 acres; it is 100 rods up to the woods. Barbara broke up soon after he went off; I think she went away in 1832. John R. Bennett occupied the 100 acres, and lived in the house with her 2 or 3 years after Aber went; Bennett stayed 2 or 3 years after Barbara left; her connections told me she went to Sandusky, and from there did not know where she went. I think the 100 acres worth 25 dollars an acre.

Cross-examined.

He said: I own adjoining this 100 acres on the same lot, south side, and south part of the lot; I own 106 acres on that lot; the 50 acres east of me was owned by Hartman; John Hartman had two hundred acres on the lot; Hartman claimed 50 acres of this 100 acres, and I have a deed of it from Hartman; I got my deed in 1830 to 1834; it might have been in 1840; the deed will show I have never been in possession of it; Mr. Gibbs has been in possession of it part of the time. Hartman married Barbara's sister Polly. Mr. Gibbs took possession after Barbara left in 1832; he claimed to own it; he *despossed* Barbara and Bennett; he had it occupied. The first year Abraham Hall had possession under Gibbs; Mr. Atkins succeeded Hall and held under Gibbs; Gibbs claimed the land; Atkins held it 14 or 15 years; Mr. Patterson held it one year of this time under Gibbs; another man held it under Gibbs; I don't know him; I think Foster came in after Atkins.

Re-examined by plaintiff.

He says: He never was in possession of the 50 acres deeded him by Hartman. He further states as follows: There is a fence along the east side of this 100 acres up next to the woods, and Foster claims up east to that fence, and this has been there many years, nearly ever since I knew the lot, and in the same line with the east line of my 100 acres south of it, and the north 100 acres has been claimed and occupied up to this ever since I knew the lot. I think Aber made the first fence on the east line next Hartman's, and it is 50 acres across *across* the east side of this 100 acres that Hartman claimed, and deeded to me, but neither of us have ever been in possession of the 50

17. Plaintiff called James S. Gibbs as a witness, who said, defendant told him in Buffalo that he was in possession, and that he had seen him on the premises.

18. Plaintiff then introduced in evidence an authenticated copy of a judgment record in an action of ejectment in the supreme court, wherein James Jackson was the nominal plaintiff on the demise of James Robecheaux, Asa Bullard, William Constable, Martin Hoffman, Thomas B. Budgen, John Richardson, Thomas Morris, and Jeremiah Van Rensselaer, Walter Wood, a count in favor of each of said lessors against Samuel Covell, claiming in each count six hundred acres in the town of Hector, county of Seneca. The action was commenced in the February term of the supreme court, 1811; caption of the record is of that term; demise laid in each count on the first day of January, 1811, and ouster on the 2d day of January, 1811. Said Samuel Covell pleaded not guilty, and a trial was had at the Seneca county circuit on Tuesday, the 18 day of June, 1812, and a verdict for plantiff, and judgment perfected on the 8th day of August, 1812. Defendant objected to this as irrelevant, and the court admitted the evidence, and defendant's counsel excepted. The plaintiff's counsel then read in evidence, without objection, the deposition of John R. Bennett, a copy of which is hereto annexed.

The plaintiff then called as a witness Absalom Hall, who testified as follows: I reside near Peach Orchard, in Hector; was brought up near lot No. 14; am 47 years old. The plaintiff went away in the spring of 1832, as near as I can recollect; she first went to David Atkison's, who resided in Hector, a mile or two from this farm; I could not say where she went to finally; I lived on this place, now in possession of the defendant; Asgill Gibbs, the plaintiff's counsel in this suit, put me in; I am satisfied that was the year; I went on in the spring of 1833 and left in the spring of 1834; a man by name of Richard A. Fare lived in a small house on the west side of this farm; don't know of a man named Hunkley being on; recollect no conversation between Gibbs and Fare. I have the record of the birth of a child in June, 1834, immediately after I left the premises; the child was not born in that place; I went on sometime in the spring of 1832; Bennett was not on the lot when I went on; he and plaintiff were both put out—both their goods; I think they were *disposed* in 1832. My father had charge of the farm the year before I went on; he did nothing except have charge of it; my impression is it was about the first of April when I went on; I am not positive about seeing the officer; I think it was in the spring of 1832; recollect of seeing the things out, and think it must have a year before.

On his cross-examination he testified as follows:

James Van Honten moved in after I left; the things were in the road 2 or 3 months; they were not my father's things; my father never lived on the lot; owned a farm worth . Bennett lived with me a while; I helped survey the line north of

the State's hundred in 1829; there was an old line then there; there is an old line tree on the west side of the State's 100 acres; the timber is cut off.

Question. Have you any paper, memorandum, or record with you that you can now produce to show the time of the birth of that child?

Answer. I have not; it was admitted that the suit commenced May 9th, 1853. Hall further testified: I pastured a part of the farm under Gibbs the year after I left. The plaintiff's counsel then read in evidence the deposition of James Atkins, as follows: I reside in Romulus, Seneca county; I am 55 years of age; occupation that of a farmer.

To the second interrogatory: I know the defendant in this suit.

To the third interrogatory: I am acquainted with the northwest corner of lot 14, Hector, now in the possession of the defendant.

To the fourth interrogatory: I resided on the premises; I went on, I believe, in the spring of 1838; I fix the time from some receipts I have, and from book accounts.

To the 5th interrogatory: I held the premises under Asgill Gibbs; I worked the place on shares; I delivered a share of the proceeds to Mr. Gibbs.

To the 6th interrogatory: The barn and house were put up while I was there for Mr. Gibbs; the house was put up in 1838; the barn, I think, was put up the next season after.

To the 7th interrogatory: I held under Mr. Gibbs a part of the time; I was in possession, with the exception of two years from the time I first went on until Foster, the defendant, came on; I held part of the last year I was on under John De Mott.

To the 12th interrogatory: There was an old line between Kellogg's land and Miller's; it was the west line of what De Mott claimed; I have *traveld* it through across the lot; I think this line commenced near to the middle of the lot, and on the north side, and run south across the lot.

Duly sworn, &c.

(Signed) JAMES ATKINS.

The plaintiff's counsel then read in evidence a judgment record, Jackson x dem, John Polhemus, and Elkanah Watson vs. John R. Bennett. It appeared by the judgment record that the action was commenced in the February term, 1829. Placita and memorandum were third Monday of February, February term, 1829. Demise April 1, 1823, to continue from that day 21 years next ensuing. Judgment signed and docketed April 15th, 1833. He also read in evidence the writ of possession under the same. This writ of possession was tested the 18th day of January, 1834, returnable the first Monday of May following, endorsed as follows: "Sheriff will take possession of 100 acres at NW. cor. of

military lot 14, Hector, now or lately in possession of defendant, or his tenants or granters, lying in square form, or nearly so, and collect $67.02 costs of suit.

A. GIBBS, *Plff's Att'y.*"

Upon this execution was the sheriff's return, as follows: "By virtue of the within, I have dispossessed John R. Bennett and J. W. Hinckley, of one hundred acres of land lying in the northwest corner of military lot 14, Hector, being the same one hundred acres in possession of said John R. Bennett, at the commencement of this suit, bounded north by the north line of said lot; west by the west line; south by William Spencer; east by Hartman; and I have put the lessors of the plaintiff in possession."

"Served April 4, 1834." "Filed 22 August, 1834."

"PETER HAGER, *Sheriff.*"

This was an exemplified copy of the writ duly authenticated by the clerk of the court of appeals. Asgill Gibbs was then sworn as a witness for the plaintiff. Witness proved a paper, of which the following is a copy:

Supreme court.

JAMES JACKSON, ex dem, ELKANAH WATSON, and JOHN POLHEMUS,
vs.
JOHN R. BENNETT.

I, Richard A. Fare, being now in possession of a small house and fourth of an acre of land on lot 14, Hector, now in my possession as tenant, under Jeremiah Hinckley, and a writ of possession having this day been executed under the judgment in the above cause, I hereby agree to hold as tenant, to the lessors of the above plaintiff at their will, at a rent of 50 cents per month, to be paid at the end of each month.

April 4, 1834. RICHARD A. FARE.

Witness said he took this acknowledgment of tenancy the day the writ of possession was executed; that he drew it, and Fare signed it in his presence, and he had held it ever since, and that the lessors never had possession until that time. [Plaintiff's counsel stated to the court that he offered these documents to fix the time at which Watson and Polhumus took possession.] I left the premises in the care of Hall; I got a deed from Elkanah Watson in 1835; I had the place some years; I gave a mortgage to Gould and Banks; De Mott came in under Gould and Banks; Foster, I suppose, held under De Mott.

The plaintiff here rested her case. The defendant's counsel

insisted upon the same objections which were taken on the trial of the cause before, and the court allowed the same exceptions to be taken, as follows:

1st. That the deed from James Robecheaux to Asa Bullard, did not describe or contain any land whatever, and for want of such description was void.

2d. That there was no evidence of any power of attorney by William Constable to James Constable, authorizing the execution of the deed to Martin Hoffman, and therefore the said deed was void.

3d. There was no evidence that any of said four deeds of conveyance, Robecheaux to Bullard, Bullard to Constable, Constable to Hoffman, and Hoffman to Budgen, were ever filed according to law.

4th. That none of said deeds were properly proved, or acknowledged and certified, so as to entitle them to be recorded at all.

5th. That none of said four deeds were recorded in Cayuga county at any time after the county of Seneca was set off, the lands contained in said deeds then being in that county.

6th. That the deed from Asa Bullard to William Constable, having been merely entered for recording, Nov. 2, 1799, and not actually recorded, could not nor could any authenticated copy of the original be read in evidence.

7th. That the recording of said deed, on the 27th of September, 1854, was of no avail, as it was recorded in Cayuga county, and the lands were in Seneca county.

8th. That the proceedings of the two chancery suits to forclose the mortgage of Richardson Bridgen, and said two enrolled decrees and sale under them are irrelevant, and did not prove the existence of mortgage.

9th. That the deed of Richardson and Wood to Elizabeth Luckey, did not cover but one hundred acres, and that title had been shown out of her as to the east half of this one hundred acres. Even if she had proved title to the other half, that taken out the State one hundred, and the four hundred conveyed to Deborah and Polly Longacre, and there remained one hundred acres.

The defendant's counsel then read from the case:

1st. The patent to William Eastman of the State's 100 acres.

2d. The deed from Wood and Richardson to Deborah and Polly Longacre, for 400 acres on this lot.

The defendant's counsel then read in evidence:

1st. A quit claim deed from Elkanah Watson and wife to Asgill Gibbs, of the premises in question, duly acknowledged and recorded in Tompkins county clerk's office. This deed bears date February 2, 1835. Consideration $250.

2d. A mortgage from Gibbs and wife to Gould and Banks, dated March 11, 1845, for the premises in question, also duly acknowledged and recorded.

3d. The enrolled decree in a foreclosure suit upon this mortgage, dated July 3, 1847, read without objection.

4th. Master's deed of the premises under the above foreclosure. Albert D. Robinson to David Banks, dated August 3, 1847, duly acknowledged and recorded.

5th. A deed from Banks and wife to John De Mott, dated Oct. 15, 1847, for the premises in question.

6. Deed from De Mott and wife, for the premises to the defendant, dated May 8th, 1848. Consideration $1,700, duly acknowledged and recorded.

Defendant's counsel here rested. The defendant's counsel again insisted upon the objections above taken, which were overruled, and defendant's counsel duly excepted; and also upon the following objections, which were also overruled, and to which the defendant's counsel duly excepted:

1st. That the title of plaintiff was not made out, in consequence of the power from William Constable to James Constable not having been proved to have ever existed.

2d. That there was no proof that plaintiff was ever in possession previous to 1817, and consequently had not been in long enough under claim of title to make a title.

3. That the record against John R. Bennett should now estop the plaintiff, inasmuch as she proves by Bennett that he defended for her; and it appears that she and Bennett were both dispossessed in that action, and asked the court to charge the jury upon all these points that made in favor of the defendant, and to find for him.

The plaintiff's counsel answered these objections as in the former case:

1st. That the deed from James Robecheaux having been executed before the patent issued and became perfect, so as to identify and describe the land designed for him, admitted no better description; and the sale and power contained in the same deed were a valid conveyance, and operated as such soon as the patent did issue.

2d. That the recital of the power of attorney in the conveyance from Martin Hoffman to Thomas B. Bridgen, recognised such power; and the grantor in that deed having admitted it by accepting the deed, it was sufficient proof of such power, and conclusive upon all coming in under that conveyance or under the grantor in it.

3. That the certified copies of the four deeds above named did show that each of them was duly and properly acknowledged or proved, as the law at the time required, and that the entry "Registered" upon said authenticated copy was good evidence of the filing according to law, and that they thereby became office papers, and were evidence thus certified of all that they contained and the entries upon them.

4th. That the certificates of proof did entitle such deeds to be recorded.

5. That Cayuga, the county in which said deeds were deposited, was the proper county in which to record them, and that the law required them to be recorded in that county.

6th. That the authenticated copy of deed from Asa Bullard to William Constable, was duly acknowledged and proved, and entered for recording, and such entry was equivalent to recording, and a certified copy equally as good as if the same had been recorded, and moreover that the same had actually been recorded, on the 27th Sept., 1854, in Cayuga county, and the production of the original deed obviated all objections as above.

7th. The possession under said deed more then 30 years had been shown which proved said deeds.

8th. That the enrolled decrees in the two chancery suits were the highest evidence of the execution of the mortgage, Richardson to Bridgen.

9th. That the deed from Richardson and Wood to Elizabeth Luckey, and Deborah and Polly Longacre, were all dated on the same day, and must be construed as one entire transaction; and that possession having been taken under the deed to Elizabeth Luckey of the whole 200 acres conveyed to her, and called 200 acres in her deed, and she having occupied accordingly or those claiming under her for more than 25 years, and cleared up to the east line of the 200 acres, she had acquired a right by possession to the quantity contained in her deed, and that it did not lie with defendant to set up an outstanding title in Hartman, nor had he shown any in himself nor in Hartman; lastly, the judgment in the ejectment suit against Corill was conclusive as to the title of the lessors, that he was proved in possession at the time the action was commenced. Judgment rendered and deed from the lessors soon after executed to Elizabeth Luckey and her ten sisters, and actual possession under that title for more than twenty years; and that defendant having shown no title, nor any other person who had been in possession since Barbara left had shown any title, the presumption was that all had been in *in* subrogation to the title under Elizabeth Luckey, or her grantor, Barbara Caldwell—and this fact was conclusive upon all; moreover, that James Constable had power to convey in the manner he did, as they have all held under the conveyance; and also,

1st. That the recital in the deed of Hoffman to Bridgen admitted the power, and was conclusive upon all persons coming in or claiming under that title, and that as no title was shown in Watson or Polhemus, only a right of possession as against Bennett, they nor any one claiming under them can make the objection.

2d. That defendant had estopped himself from disputing the power by introducing the title from Wood and Richardson to the whole lot except the west half of this hundred acres.

3d. That the legal inference is, that Wood and Richardson and others had recovered the lot in an action against Coriell in August, 1812, and had conveyed the whole Oct. 16 same year; that the grantors were then in possession, and were succeeded by their grantors; and in the absence of proof that they were not in actual possession, the law would infer that they were.

4th. That the judgment of Watson and Polhemus proved nothing, as plaintiff was not a party in that action, and they acquired no other right than Bennett had, which was a mere right to purchase.

5th. That the term claimed by plaintiff in that action had expired long before this action was commenced.

The court overruled all the above objections specifically taken, and to each of said rulings the defendant's counsel excepted. The court then directed the jury to find for the plaintiff, to which direction the defendant's counsel duly also duly excepted. The jury found a verdict for the plaintiff for the premises in question; and the defendant's counsel then and there requested the court to set their hands and seals to this bill of exceptions, and the judges of said court did then and there sign and seal the same, the said bill of exceptions having been settled and agreed upon by the counsel for the respective parties.

N. K. HALL.

Deposition of a witness produced, sworn, and examined the sixth day of June, A. D. 1856, at Woodhul, Shiawassee county, and State of Michigan, under and by virtue of a commission issued out of the circuit court of the United States in the northern district of New York, in a certain cause therein depending and at issue between Barbara Ann Caldwell, plaintiff, and Absalom Foster, defendant.

John R. Bennett, of Woodhul, Shiawassee county, and State of Michigan, aged fifty-nine years and upwards, a carpenter and joiner, being duly and publicly sworn pursuant to the direction hereto annexed, and examined on the part of the plaintiff, doth depose and say as follows, viz:

To the first interrogatory, witness says: He *is* fifty-nine years old last March; I am a carpenter and joiner, and reside in Woodhul, county of Shiawassee, State of Michigan.

To the second interrogatory, witness says: I know the plaintiff—not the defendant; I have known the plaintiff since 1828.

To the third interrogatory, witness says: I did reside on military lot No. 14, Hector, Tompkins county, State of New York; I resided on the northwest corner, and occupied one hundred acres.

To the fourth interrogatory, witness says: I entered upon said lot in the spring of 1828, by permission and agreement of plaintiff, by a bargain and agreement with her; I went on by an agree-

ment to purchase; I was to give one thousand dollars, in payments of one hundred dollars a year, with annual interest on each payment. There was a suit commenced by Elkanah Watson and others against me to recover the possession of the farm, and we concluded not to have any papers made until the suit was decided, and no papers were executed; I agreed to defend the suit; these agreements were not in writing.

To the fifth interrogatory, witness says: The plaintiff remained on the lot after I went on from three to four years in the house with me, and boarded with me; she left between 1831 and 1833; I remained from six months to a year longer; she went to Mount Morris, Livingston county; I last saw her at Ovid, Seneca county; I do not know when she went to Ohio.

To the sixth interrogatory, witness says: When she left I claimed the premises, as stated in the answer to the fourth interrogatory; I claimed under the plaintiff.

To the seventh interrogatory, witness says: She (plff.) never abandoned or relinquished her claim on the land, to my knowledge.

To the eighth interrogatory, witness says: I do not know of any other matter or thing of advantage to the plaintiff to this action.

JOHN R. BENNETT.

Examination taken, reduced to writing, and by the witness subscribed and sworn to, this 6th day of June, A. D. 1856, before me.

ANDREW J. CUTTER,
Commissioner.

To the first cross-interrogatory, witness says: I and the plaintiff did not leave at the same time the premises on lot 14, in Hector, Tompkins county; I left Abraham Hull in possession of the premises, and left a part of my goods there, and I understood my goods were put out.

To the second cross-interrogatory, witness says: I do not know who put Hall out or my goods; I do not know who the officer was or who assisted him.

To the third cross-interrogatory, witness says: I do not know whether Asgill Gibbs was there, or any person in his behalf.

To the fourth cross-interrogatory, witness says: I do not know what was done with the plaintiff's goods when Hall was put out.

To the fifth cross-interrogatory, witness says: The contract with the plaintiff was made before any one was put out of possession; the contract was not made in consequence or in anticipation of her being put out; it was made in 1828.

To the sixth cross-interrogatory, witness says: The plaintiff went away before I did, and was not put out of possession.

To the seventh cross-interrogatory, witness says: I have an-

swered this interrogatory in my answer to the fifth direct interrogatory as fully as I can; I do not know that she went to Ohio, or how long she remained in the place she did go to.

To the eighth cross-interrogatory, witness says: I paid nothing after plaintiff went away more than the taxes.

To the ninth cross-interrogatory, witness says: It was worked on under his name, (Asgill Gibbs' name;) immediately after Hall went off, I think a man by the name of Atkins worked the farm.

To the tenth cross-interrogatory, witness says: I do not know who was on the farm the first ten years after the plaintiff left except while Hall and I were there.

To the eleventh cross-interrogatory, witness says: I was not forcibly put out of possession, nor was the plaintiff.

To the twelfth interrogatory, witness says: I was not put out of possession; Hull was; I don't know that she had any knowledge of it.

To the thirteenth cross-interrogatory, witness says: We were not *dispossed*; Hull was *dispossed* from the northwest one hundred acres of lot No. 14, Hector, Tompkins county; it commenced at the northwest corner of the lot, and run one hundred rods east and a half a mile south, and one hundred rods west, and a half a mile north to the place of beginning, sufficient to make one hundred acres of land, except six acres out of the southwest corner sold to William Spencer.

To the fourteenth cross-interrogatory, witness says: No one has examined me on the part of the plaintiff until now.

To the fifteenth interrogatory, witness says: I do not know of any other matter or thing that would be of advantage to the defendant in this cause.

JOHN R. BENNETT.

Circuit court United States, northern district N. York, 2d circuit.

BARBARA CALDWELL
vs.
ABSALOM FOSTER.

It is agreed by the attorneys of the parties to the above action, that the case made by plaintiff, on which a motion for new trial was made, or a true copy of such case, may be read in evidence on the trial of said cause, and the facts proved and established upon the trial of said cause at October term, 1854, and embraced or contained in such case, are to be deemed on trial of said cause at any future time as facts proved as fully as though the documents and witnesses were again produced in court, subject to the same exceptions as if the witnesses and documents were again produced in court; but either party is at liberty nevertheless to introduce upon trial the same documents, depositions, and wit-

nesses, and any other legal and admissible evidence they may see fit.

May 24, 1856.

JAMES S. GIBBS,
Atty. of Plff.
HENRY D. BARTO,
Defts. Atty.

Document No. 2.

Deed.—James Robecheaux to Asa Bullard.

Know all men by these presents, that I, James Robecheaux, of Albany, late captain in the regiment raised in the State of New York, commanded by Colonel James Livingston, having engaged and continued in the service of the United States until discharged, for and in consideration of the sum of fifty pounds to me in hand paid by Asa Bullard, of New York city, of New York, at or before the ensealing and delivery of hereof, the receipt whereof is hereby acknowledged, and therewith are fully contented, satisfied, and paid, have granted, bargained, sold, assigned, transferred, and set over, and by these presents do grant, bargain, sell, assign, transfer, and set over all my estate, right, title, interest, claim, and demand of, in, and to all the proportions of lands to be granted to me in pursuance of a resolution of the honorable the Congress of the United States, and also pursuant to an act of the honorable the Legislature of the State of New York: To have and to hold the said *the said* estate, right, title, interest, claim, and demand of the said proportions of lands to be granted as aforesaid, to the said Asa Bullard, his heirs and assigns, to the only proper use and behoof of the said Asa Bullard, his heirs and assigns forever; and I do hereby constitute and appoint the said Asa Bullard, of New York, in the city and county of New York, his heirs and assigns, and the survivor of them, my true and lawful attorneys, hereby authorizing and empowering them and the survivor of them to appear before the commissioners of the land office, or other persons whomsoever, and exhibit in my name claims for the said proportions of lands, and to demand, require, and receive grants or patents of the said proportions or patents of lands, and at the proper costs and charges of the said Asa Bullard, thereupon by good and sufficient deeds and conveyances in the law to be made and executed, by the said attorneys or the survivor of them, in my name, to grant, release, and convey the said proportions of lands assigned for the consideration before mentioned to the said Asa Bullard: To have and to hold to the said Asa Bullard, his heirs and assigns, to the only proper use and behoof of the said Asa Bullard, his heirs and assigns forever, and to do and perform all and every act and things necessary for the requiring and receiving of the said grants of the said propor-

tions of lands, and for conveying and releasing the same to the said Asa Bullard, as might or could be required of me if personally present, as if the same required more special authority than is here set forth; and I do hereby covenant to and with the said Asa Bullard, of the aforesaid city of New York, that I or any person on my behalf have not any time since my discharge, except to the said Asa Bullard, sold, assigned, transferred, conveyed, or disposed of my estate, interest, claim, or demands of or in the said proportions of lands hereinbefore mentioned, to any person or persons whomsoever; and that I or any person on my behalf have not at any time since my said discharge, except Asa Bullard, given power to, or authorized in any manner whatsoever, any person or persons to lay claim to, or demand or receive grants for the said proportions of lands, or to convey or release the same to any person or persons whomsoever; and I do further declare this letter of attorney to be irrevocable.

JAS. ROBECHEAUX. [L. S.]

Sealed and delivered in the presence of—
JER'H LANSING,
JNO. BLANCHARD.

Personally appeared the above named James Robecheaux, who being solemnly and duly sworn, did depose and say, that the facts contained and set forth in the foregoing covenants are true. Sworn before me the twenty-ninth day of August, 1791.

JER'H LANSING,
One of the Masters in Ch'y of the State of New York.

JAMES ROBECHEAUX.

Be it remembered, that on the twenty-ninth day of August, one thousand seven hundred and ninety-one, appeared before me, Jeremiah Lansing, one of the masters in chancery for the State of New York, James Robecheaux, who acknowledged that he signed, sealed, and delivered this instrument for the purposes therein mentioned, and I have examined the same, and finding no erasures or interlineations therein, do allow the same to be recorded.

JER'H LANSING.

State of New York, ss.

On that 17th day of May, 1811, personally appeared before me Jeremiah Lansing, to me known, who, being duly sworn, doth depose and say, that he did see James Robecheaux, who he knew as the grantor within named, execute the within instrument and form, signing his name thereto as a witness; he has no doubt that he heard him acknowledge the same as and for his act and deed, and that his name signed thereto as a witness is of his own

handwriting. Finding no erasures or interlineations, I allow the same to be recorded.

GARRET T. LANSING,
Master in Chancery.

Regs. 28, 1795. Recorded this 22 May, 1811, 8 o'clock a. m.
E. T. TROOP, *Clk.*

Document 3.

Asa Bullard to William Constable.

This indenture, made the 8th day of November, in the year one thousand seven hundred and ninety-one, between Asa Bullard, of the city of New York, gentleman, assignee of James Robecheaux, late a captain in the New York line of the army, but now of the county of Albany, of the one part, and William Constable, esquire, of the city of New York, of the other part, witnesseth: That the said Asa Bullard, for and in consideration of the sum of one hundred and twenty pounds, lawful money of the State of New York to him in hand paid at or before the ensealing and delivery of these presents, the receipt whereof *his* hereby acknowledged, and him, the said William Constable, esquire, his heirs, executors, and administrators, hereof and therefrom, doth hereby acquit, exonerate, release, and forever discharge, hath granted, bargained, sold, aliened, remised, released, conveyed, assigned, fully, freely, and absolutely by these presents, unto the said William Constable, esquire, all those certain lots, pieces, or parcels of land situate, lying, and being in the county of Montgomery, now called Herkimer, and in a tract of land set apart by the said State, as a gratuity to the line of such State, lately serving in the army of the United States, which lot, piece, or parcel *or parcel* of land is known and distinguished on the map *on the map* of military townships, filed in the secretary's office of this State, by lot number thirty-four, in the township of Dryden, lot No. fourteen, in the township of Hector, and lot No. twenty-four, in the township of Hector, containing each six hundred acres, with the reservations in the letter's patent expressed together, with all and singular the appurtenances, privileges, and advantages unto the said lot, piece, or parcel of land in anywise appertaining or belonging, and the reversions and remainders, rents, issues, and profits thereof, with the appurtenances, and also all the estate, right, title, interest, property, claim, and demand whatsoever, as well in law as in equity of the said Asa Bullard, of, in, and to the same, or any part or parcel thereof, with the appurtenances: To have and to hold the said lot, piece, or parcel of land, and all and singular the premises above mentioned, and particularly described with the appurtenances, unto the said William Constable, esquire, his heirs and assigns, for their only proper use, benefit, and behoof

forever; and the said Asa Bullard, for himself and his heirs, executors and administrators, doth covenant and promise, grant and agree to and with the said Asa Bullard, his heirs and assigns, that he, the said Asa Bullard, at the time of ensealing and delivery of these presents, is lawfully seized in his own right of and in the same lot, piece, or parcel of land, and premises above mentioned, hereby granted and conveyed, and released, as of a good, sure, perfect, absolute, and indefeasible estate of inheritance in the law in fee simple, without any manner of condition to alter, change, determine, and defeat the same, and hath in himself good right, full power, and lawful authority to grant, bargain, sell, convey, and release the said lot, piece, or parcel of land, with the appurtenances, unto the said William Constable, esquire, his heirs and assigns, in manner aforesaid; and also he, the said *said* William Constable, esquire, his heirs and assigns, shall and may from time to time, and at all times forever hereafter, peaceably and quietly have, hold, use, occupy, possess, and enjoy the said lot, piece, or parcel of land above mentioned, with the appurtenances, without suit, trouble, molestation, or interruption whatever of the said Asa Bullard, or his heirs or assigns, or any other person or persons having, or lawfully claiming or to claim estate, right, title, or interest of, in, and to the same, or any part or parcel thereof, and that free and clear, and freely and clearly acquired, exonerated, released, and forever discharged, or otherwise well and sufficiently saved, kept harmless, indemnified of, from, and against all former and other gifts, grants, bargains, sales, leases, releases, mortgages, dowers, rights, and titles of dowers, and from all other charges, troubles, and incumbrances whatsoever, had made, committed, done, or suffered by the Asa Bullard, or by any other person or persons whomsoever having, or lawfully claiming or to claim any estate, right, title, or interest of, in, and to the aforesaid pieces or parcels of lands; and that the said Asa Bullard and his heirs, the said lot of land and premises above described, *and* hereby granted, conveyed, and released, and every parcel and part thereof, with the appurtenances, unto the said William Constable, esq., his heirs and assigns, against him, the said Asa Bullard, his heirs and assigns, and all and every other person or persons whatsoever, shall and will warrant, and by these presents forever defend.

In witness whereof, the parties to these presents have hereto set their hand and seal in New York, the day and year above written.

ASA BULLARD. [L. S.]

Sealed and delivered in the presence of us—
JAMS. ABELL,
TIMOTHY TITUS.

New York, ss.

Be it remembered, that on this fifteenth day of April, in the year our Lord one thousand seven hundred and ninety-five, personally appeared before me, John Rey, one of the masters in chancery for the State of New York, James Abell, one of the subscribing witnesses to the within indenture, who, being duly sworn, did depose and say, that he was present and saw Asa Bullard, the within grantor, execute the within indenture, by signing, sealing, and delivering the same, as and for his voluntary act and deed to and for the uses and purposes therein mentioned, and that he, the said James Abell and Timothy Titus, subscribed the same as witnesses thereto. I having inspected the same, and finding therein no material erasures or interlineations but such as are noted, do allow the same to be recorded.

JOHN RAY.

Be it remembered, that on the 31st day of October, 1799, personally appeared before me, Thomas Mumford, a master of the court of chancery of the State of New York, James Abell, to me known, who, being duly sworn, deposeth that he saw Asa Bullard execute the within instrument for the uses and purposes therein mentioned; that he subscribed his name thereto as a witness, and saw Timothy Titus sign the same as a witness, and that he knew the said Asa Bullard to be the same person as is within described as grantor; and there appearing no material erasures or interlineations in the said instrument, I do allow the same to be recorded.

THOMAS MUMFORD.

Endorsed: Reg., 29 April, 1795. Entered for recording, November 2, 1799.

Cayuga county clerk's office, ss.

I certify that the foregoing transcript of an original deed on file (as appears by the entry of registry on said deed, as above noted) in this office, and that the whole of such original; that it has been by me compared with such original, and found to be a correct copy thereof.

In testimony whereof I have hereunto subscribed my name and affixed the seal of the court *of the court* of common pleas of said county, this ninth day of June, A. D. 1832.

M. S. MYERS, *Clerk.*

Document No. 4.

William Constable, by James Constable, his attorney, to Martin Hoffman:

This indenture, made the 14th day of February, in the year of

our Lord one thousand seven hundred and ninety-two, between William Constable, of the city of New York, merchant, by James Constable, his attorney, of the first, and Martin Hoffman, of the same city, merchant, of the second part, witnesseth: The said William Constable, by his said attorney, for and in consideration of the sum of five hundred pounds, current money of the State of New York, to him in hand paid by the said Martin Hoffman at or before the ensealing and delivery of these presents, the recpt. whereof is hereby acknowledged, hath granted, bargained, and sold, aliened, released, and forever quit claimed, and by these presents doth grant, bargain, and sell, alien, release, convey, and forever quit claim unto the said Martin Hoffman, his heirs and assigns forever, all those ten certain tracts or lots of land situate, lying, and being *and being* now or late in the county of Montgomery, and known and distinguished on maps of the township in which they respectively lie, filed the surveyor general in the *secretarie's* office, agreeably to law, as follows, to wit: by lots number fourteen and number twenty-four, in the township of Hector, lot number 34, in the township of Dryden, lot number 38, in the township of Junius; lot number 100, in the township of Ovid; lot number 92, in the township of Brutus; lot number sixty-six, in the township of Marcellus; lot number sixty-one, in the township Hannibal; lot number fifty, in the township of Lysander; and lot number seventy-five, in the township of Cincinaties, each containing six hundred acres, the said lots containing together six thousand acres; together with all and singular the rights, hereditaments, and appurtenances to the same belonging or in anywise appertaining, excepting and reserving all gold and silver mines, and one hundred acres of each of the said lots, to be laid out in a square as nearly as may be in each of the south-east corners thereof, and also five acres of every hundred acres of the said tracts or lots of lands for highways, the said lots also being subject to such conditions as are contained in the original patents thereof: To have and to hold the above described and granted premises unto the said Martin Hoffman, his heirs and assigns, to the only proper use, benefit, and behoof of the said Martin Hoffman, his heirs and assigns forever.

In witness whereof, the parties to these presents have hereunto interchangeably set their hands and seals, the day and year first above written.

WILLIAM CONSTABLE, [L. S.]
Per JAMES CONSTABLE. [L. S.]

Sealed and delivered in presence of—
SIMON GLEN,
FRED'K BABCOCK.

State of New York, ss.

On the 9th day of May, 1812, before me, came Frederick Bab-

cock, to me known to be the subscribing witness of that name to the execution of the within conveyance, who, on oath before me made, did say that he saw James Constable, as the attorney of and for William Constable, execute the said conveyance, and that he knew him to be the person therein described; that he, the deponent, and Simon Glen subscribed their names thereto as witnesses. I allow it to be recorded.

BEN. LEDYARD,
Master in Chancery.

Registered 30 April, 1795. Recorded May 21, 1812, at 3 o'clock p. m. Books S. A., page 147, &c.

E. T. THROOP, *Clerk.*

Cayuga county clerk's office, ss.

I certify that the foregoing is a copy of the record of a deed in this office, and of the whole of such record, that it has been by me compared with such record, and found to be a correct and true copy thereof.

In testimony whereof, I have hereunto subscribed my name and affixed the seal of the court of common pleas of said county, this seventh day of June, A. D. 1832.

M. S. MYERS, *Clerk.*

Document No. 5.

Deed.—Martin Hoffman to Thomas B. Bridgen.

This indenture, made the seventh day of March, in the year of our Lord one thousand seven hundred and ninety-three, between Martin Hoffman, of the city of New York, merchant, of the first part, and Thomas B. Bridgen, of the same place, esquire, of the second part: Whereas, in and by certain indenture of release, bearing date the 14th day of February, in the year of our Lord one thousand seven hundred and ninety-two, William Constable, by James Constable, his attorney, did convey unto the said Martin Hoffman all those two certain lots of land hereinafter released and described particularly: now, this indenture witnesseth, that the said Martin Hoffman, for and in consideration of the sum of one hundred and fifty-six pounds and five shillings, current money of the State of New York to him in hand paid by the said Thomas B. Bridgen at or before the ensealing and delivery of these presents, the receipt whereof is hereby acknowledged, hath granted, bargained, and sold, and by these presents doth grant, bargain, and sell, release, and forever quit claim unto the said Thomas B. Bridgen, his heirs and assigns forever, all those two certain lots, pieces, or parcels of land situated, lying, and being in the county of Tioga, and in a tract of land set apart by the State of New York as a gratuity to the line of the said State lately serving in

the army of the United States, pursuant to the statute in such case made and provided; which said lots, pieces, or parcels of land are known and distinguished on the maps of the military township filed in the secretary's office of the State of New York, pursuant to law, by lots number fourteen and twenty-four, in the township of Hector, each containing five hundred acres, together with all and singular the rights, members and appurtenances to the same belonging or in anywise appertaining, and the remainder and remainders, rents, issues, and profits thereof: To have and to hold the said pieces or parcels of land, and all and singular the above described premises, with the appurtenances, unto the said Thomas B. Bridgen, his heirs and assigns, to the only proper use, benefit, and behoof of said Thomas B. Bridgen, his heirs and assigns forever, subject to the restrictions and reservations in the original letters patent contained.

In witness whereof, the parties to these presents have hereunto interchangeably set their hands and seals the day and year first above written.

MARTIN HOFFMAN. [L. S.]

Sealed and delivered in the presence of the—words "each containing five hundred acres" being first interlined—

ABRAHAM POUTE,
CHARLES BRIDGEN.

New York, ss.

Be it remembered, that on the 15th day of April, in the year of our Lord one thousand seven hundred and ninety-five, personally appeared before me, John Ray, one of the masters in chancery for the State of New York, Charles Bridgen, one of the subscribing witnesses to the above indenture, who, being duly sworn, did depose and say, that he was present and saw Martin Hoffman, the above grantor, execute by signing, sealing, and delivering the same, as and for his voluntary act and deed to and for the uses and purposes therein mentioned; and that he, the said Charles Bridgen and Abraham Pouts, junior, subscribed the same as witnesses, and I having inspected the same, and finding therein no material erasures or interlineations but such as are noted, do allow the same to be recorded.

Regt. 28 April, 1795.

JOHN RAY.

State of New York, ss.

On the ninth day of May, 1812, before me, came Martin Hoffman, to me known to be the person described in and who executed the within release, and who did acknowledge that he had executed the same, the alteration being noted. I allow the same to be recorded.

BEN. LEDYARD,
Master in Chancery.

Recorded May 21, 1812, at 2 o'clock p. m., book S A, pages 146, &c.

E. T. THROOP, *Clk.*

Cayuga county clerk's office, ss.

I certify that the foregoing is a copy from the record of a deed in this office and of the whole of such record, that it has been by me compared with said record, and found to be a correct and true copy thereof.

In testimony whereof, I have hereunto subscribed my name and affixed the seal of the court of common pleas of said county, the seventh day of June, A. D. 1832.

[L. S.]

M. S. MYERS, *Clerk.*

No. 6.

John Richardson to Thomas B. Bridgen.

An abstract of a mortgage from John Richardson, of the county of Onondaga, esquire, to Thomas B. Bridgen, of the city of New York, esquire, dated this thirteenth day of February, in the year of our Lord one thousand seven hundred and ninety-five, for all those four certain lots of land situate, lying, and being in the county of Onondaga, and known and distinguished as lots number seventy-one, in the township of Locke, containing five hundred and fifty acres, lots number fourteen and seventy-four, in the township of Hector, each containing five hundred acres, and lot number seventy-three, in said township of Hector, containing six hundred acres, subject to the conditions and reservations expressed and contained in the several letters patent therefor; it being to secure the payment of the just and full sum of nine hundred and eighty-five pounds five shillings, current money of the State of New York, to be paid to the said Thomas B. Bridgen, his executors, administrators, or assigns, on the several days and times therein mentioned, with lawful interest, as therein set forth by one certain obligation bearing equal date with these presents, in the penal sum of one thousand nine hundred and seventy pounds and ten shillings, current money aforesaid.

Recorded the 27th day of April, 1795, at 8 o'clock a. m.

BEN. LEDYARD, *Clerk.*

State of New York, Cayuga county clerk's office, ss.

I hereby certify that I have compared the foregoing with the original abstract of a mortgage from John Richardson to Thomas B. Bridgen, remaining in my office, and that it is a correct transcript therefrom, and of the whole of such original.

In witness whereof, I have hereunto set my hand and affixed the seal of said county, this sixteenth day of June, A. D. 1854.

[L. S.]

B. B. SNOW,
Depy. Clerk.

No. 7.

This indenture, made the sixteenth day of October, in the year of our Lord 1812, between John Richardson and Walter Wood, of Scipio, in the county of Cayuga, and State of New York, of the first part, and Elizabeth Luckey, of Aurelius, in said county, of the second part, witnesseth: That the said parties of the first part, for and in consideration of eight hundred dollars, money of account of the United States to them in hand paid by the said party of the second part, the receipt whereof is hereby confessed and acknowledged, have granted, bargained, sold, remised, released, and confirmed, and by these presents do grant, bargain, sell, release, remise, alien, and confirm unto the said party of the second part, and to her heirs and assigns forever all that certain lot, piece, or parcel of land situate, lying, and being in the county of Seneca, and known and distinguished by part of lot number fourteen, in the township of Hector, and is bounded and described as follows, to wit: Beginning at the northwest corner of said lot, and runs east on the north line of said lot to the northwest corner of a piece of land this day conveyed by the parties of the first part to Polly and Deborah Longacre; thence south on the west line of their lands to the south line of said lot; thence west to the southwest corner of said lot; thence north to the place of beginning, containing two hundred acres of land, be the same more or less, together with all and singular the hereditaments and appurtenances thereto belonging or in anywise appertaining, and the reversion and reversions, remainder and remainders, rents, issues, and profits thereof, and all the estate, right, title, interest, claim, and demand whatsoever of the said parties of the first part, either in law or equity of, in, and to the above bargained premises, with the said hereditaments and appurtenances: To have and to hold the said above mentioned premises to the said party of the second part, her heirs and assigns, to the sole and only proper use, benefit, and behoof of the said party of the second part, her heirs and assigns forever. And the said parties of the first part, for themselves, their heirs, executors, and administrators, do covenant, grant, bargain, promise, and agree to and with the said party of the second part, heirs and assigns, to warrant and forever to defend the above bargained premises and every part and parcel thereof now being in the quiet and peaceable possession of the said party of the second part, against the said party of the first part, their heirs, executors, and administrators, and assigns, and

against all and every other person or persons claiming or to claim the said premises or any part thereof.

In witness whereof, the parties of the first part have hereunto set their hands and seals the day and year first above written.

JOHN RICHARDSON, [L. S.]
WALTER WOOD. [L. S.]

Sealed and delivered in presence of—
E. BURNHAM.

State of New York, ss.

On this 16th day of October, 1812, before me, came Walter Wood and John Richardson, the within grantors, to me known to be the persons described in, and who executed the within deed, and acknowledged that they executed and delivered said deed for the uses and purposes therein mentioned; therefore, I allow it to be recorded.

EBENEZA BURNHAM,
Master in Chancery.

Recorded the 9th day of November, 1812, at 6 o'clock p. m.
SILAS HALSEY, *Clerk.*

Seneca county clerk's office, ss.

I certify that the foregoing is a transcript of the original record in this office and of the whole of such original , that it has been by me compared with such original, and found to be a true copy thereof.

In testimony whereof, I have hereunto affixed the seal of the court of common pleas of said county, and subscribed [L. S.] my name, this eighth day of June, A. D. 1832.

GEO. DANFORTH,
Dep. Clerk.

No. 8.

This indenture, made the tenth day of January, in the year of our Lord one thousand eight hundred and fourteen, between Elizabeth Luckey, of Aurelius, in the county of Cayuga, and State of New York, of the first part, and Barbara Ann Caldwell, of Hector, in the county of Seneca, and State of New York, of the second part, witnesseth: That the said party of the first part, for and in consideration of the sum of one thousand dollars, lawful money of the United States of America to her in hand paid by the said party of the second part, at and before the ensealing and delivery of these presents, the receipt whereof is hereby acknowledged, hath granted, bargained, and sold, remised, released, aliened, and confirmed, and by these presents doth grant, bargain, sell, remise, release, and confirm unto the

said party of the second part, (in her actual possession now being,) and to her heirs and assigns forever, all that certain piece or parcel of land being part of lot number fourteen, in the said town of Hector, bounded as follows, to wit: beginning at the southwest corner of said lot, running thence north on the west line thereof to the northwest corner of the same; thence east on the north line of said lot one-third part of the length of said north line; thence south to the south line of said lot; and thence west on the south line of the second to the place of beginning, containing two hundred acres of land, together with all and singular the hereditaments and appurtenances thereunto belonging or in anywise appertaining, and the reversion and reversions, remainder and remainders, rents, issues, and profits thereof, and also all the estate, right, title, interest, property, claim, or demand whatsoever of the said party of the first part, either in law or equity of, in, and to the above described premises, with the said hereditaments and appurtenances: To have and to hold the said premises above particularly mentioned and described, to the said party of the second part, her heirs and assigns, to the sole and only proper use, benefit, and behoof of the said party of the second part, her heirs and assigns forever; and the said party of the first part, for herself, her executors, and administrators, doth covenant, grant, promise, and agree to and with the said party of the second part, her heirs and assigns, the above bargained premises in the quiet and peaceable possession of the said party of the second part, her heirs and assigns, and against all and every person or persons whatsoever lawfully or equitably claiming or to claim the whole or any part thereof, will forever warrant and defend.

In witness whereof, the said party of the first part has hereunto set her hand and seal the day and year first above written.

her
ELIZABETH ⋈ LUCKEY. [L. S.]
mark.

Signed, sealed, and delivered in presence of—
S. A. L. WARREN.

State of New York, ss.

On the 10th day of January, 1814, before me, came Elizabeth Luckey, the grantor within named, and acknowledged that she executed the within indenture; and at the same time came Abraham Hall, with whom I am acquainted, and being *being* by me duly sworn, said he knew the said Elizabeth Luckey to be the person described in and who executed the said indenture. I do therefore allow the same to be recorded.

SETH A. L. WARREN,
Master in Chancery.

Recorded the 19th day of January, 1814, at 8 o'clock, a. m.
SILAS HALSEY, *Clerk.*

Seneca county clerk's office, ss.

I hereby certify, that the foregoing is a true transcript of the original record in this office, and of the whole of such original; that it has been by me compared with such original, and found to be a true copy thereof.

In testimony whereof, I have hereunto affixed the seal of the court of common pleas of said county, and subscribed my name, this 8th day of June, A. D. 1832.

GEO. DANFORTH,
Dep. Clerk.

No. 9.

This indenture, made the 16th day of October, A. D. 1812, between John Richardson and Walter Wood, of Scepio, in the county of Cayuga, and State of New York, of the first part, and Deborah Longacre and Polly Longacre, of the town of Aurelius, in said county, of the second part, witnesseth: That the said parties of the first part, for and in consideration of the sum of one thousand six hundred dollars, money of account of the United States to them in hand paid by the said parties of the second part, the receipt whereof is hereby confessed and acknowledged, have granted, bargained, sold, remised, released, aliened, and confirmed, and by these presents *to* grant, bargain, sell, alien, remise, alien, and confirm unto the said parties of the 2d part, and to their heirs and assigns forever, all that certain lot, parcel, or piece of land situate, lying, and being in the county of Seneca, and is known and distinguished by being part of lot No. 14, in the town of Hector: the whole premises hereby conveyed containing four hundred acres on said lot, to be taken off across the easterly part of said lot, as owned by the parties of the first part, or either of them, by a north and south line parallel to the east line of said lot; which premises are not to vest in the grantors as tenants in commons, they hereby expressly having agreed between themselves, to, and with the grantors, that the east two hundred acres of the said four hundred acres shall vest in the said Deborah Longacre, her heirs and assigns forever; and the west two hundred acres of the said four hundred acres shall vest in the said Polly Longacre, her heirs and assigns forever, together with all and singular the hereditaments and appurtenances thereto belonging or in anywise appertaining, and the reversion and reversions, remainder and remainders, rents, issues, and profits thereof, and all the estate, right, title, interest, claim, and demand whatsoever of the said parties of the first part, either in law or in equity of, in, and to the above bargained premises, with the said